

76-1969

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Executive Registry

76-1965

15 APR 1976

MEMORANDUM FOR: Deputy Director for Intelligence
Deputy Director for Operations
Deputy Director for Science and Technology

FROM : John F. Blake
Deputy Director for Administration

SUBJECT : Communications Between Agency Personnel and
Contractor Personnel Regarding Agency Contracts -
Contract Overruns

1. In December of 1972, Attachment A hereto, which recapitulated Agency policy concerning contractual and technical management of Agency contracts, was distributed to each of the Deputy Directors. Attachment B placed a requirement on our contracting officers to include in each contract a clause which delineated the authority of Agency employees.

2. A recent survey of Agency contractors has revealed concern on the part of our contractors regarding communications between Agency technical personnel and contractor technical personnel. Contractor concern is that Agency technical officers may be tasking contractor personnel for services in excess of contract requirements. Such action is a problem for the contractor as it increases costs, reduces the percentage of profit, and may, depending on the magnitude of the tasking, force the contractor to request additional cost and/or fee dollars. It is no less a problem for the Agency as it may result in overruns or changes in scope which place unplanned demands on the Agency budget. A further problem which has surfaced in several recent cases is that unilateral technical direction to contractors may jeopardize the Government remedy of defaulting the contractor for failure to make progress or nonperformance.

3. Also a problem in our contracting arena in FY 1976 has been an increase in the frequency and magnitude of cost overruns. The reasons for these overrun problems have run the gamut from unexpected technical difficulty and increased

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Personnel Regarding Agency Contracts - Contract
Overruns

indirect rates to admitted mismanagement on the part of the contractors. In several of the overrun cases presented to the Contract Review Board, it has been evident that neither the contractor nor our own contracting teams (contracting and technical personnel) projected the overrun on a sufficiently timely basis for planning purposes. Undoubtedly, the double-digit inflation which has been with us for so long has exacerbated our problem; but this certainly is not the whole problem, and, unquestionably, there are many other factors contributing to our overrun problems. While no in-depth study has been performed which would allow us to isolate specific significant causes for overruns, it appears that some of our contractors may have bid in at prices which, upon close examination, were impossible to achieve. Such low bids may appear to result in cost savings initially as no fee is paid on overrun dollars; however, they play havoc with the Agency budget system. On our R&D contracts, except in unusual cases, the overrun must be paid out of current year funds to the detriment of current programs. On programs other than R&D, depending on the circumstances, funding may be used from prior year funds; and this again is a problem since prior year funds may not be available in the future.

4. In summary, I have attempted to handle two somewhat difficult subjects in this memorandum. The problems include: (a) improper written communications between Agency and contractor technical officers which are of concern to our contractors and which are weakening the Agency's legal position for remedial action, and (b) increasing frequency and magnitude for overruns. While specific causes and solutions are not easily defined, the following actions are requested:


a. Redistribute to your Office directors, for further dissemination to their personnel, Attachment A, Statement of Policy.

b. Require that all written communications to Agency contractors go out over the signature of the cognizant contracting officer when such correspondence in any way affects the contract performance.

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c. Institute new procedures or reemphasize existing procedures to eliminate the practice of buying in on cost-type contracts, and

d. Review contract monitoring procedures including systems for ensuring the receipt and review of contractor cost and progress reports


/s/ John F. Blake


John F. Blake

STATINTL

Atts

CONCURRENCE:

STATINTL


John D. Iams
Comptroller

19 APR 1976

Date

Distribution:

- 1 - Ea. Addressee
- 1 - Compt.

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: Deputy Director for
Administration
7D18 Headquarters

EXTENSION

NO.

5454

DATE

TO: (Officer designation, room number, and building)

DATE

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

RECEIVED

FORWARDED

1. Director of Central
Intelligence
7E12 Headquarters

5/6/76

MB/KT

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THIS, RE COST OVERLAPS ON
CIA CONTRACTS, AS IN YOUR
RESPONSE TO AN EARLIER
MEMO ON SAME SUBJECT:

"WAS THIS (THE MEMO)
PROMPTED BY ANY PARTICULAR
CASE?"

SA/CT

NR

57

20 DEC 1972

MEMORANDUM FOR: Deputy Director for Intelligence
Deputy Director for Plans
Deputy Director for Science and Technology
Deputy Director for Support

SUBJECT : Statement of Policy and Related Matters Concerning
Contractual and Technical Management of Agency
Contracts

1. The National Security Act of 1947 and the Central Intelligence Agency Act of 1949 confer important and unique special authorities on the Director and the Agency. They have provided the Agency the security and flexibility with which to carry out its mission. Inherent in this authority is the equivalent responsibility that the Agency conduct its affairs in a manner beyond reproach. This is of particular importance in the management of the contracts the Agency executes to carry out many of its functions. I consider it very important that all concerned with this function be clear as to their responsibilities.

2. Attached are three statements which should be brought to the attention of those personnel involved in execution and management of the Agency contractual processes. Attachment 1 is a statement of policy designed to strengthen the role of the Agency contracting officer and clarify or reinforce the definition of contractual responsibilities. Attachment 2 is designed with the purpose of improving the interface between Agency senior managers and senior managers of contractors to effect more positive communications. Attachment 3 deals with the establishment of a clear line of technical direction to contractors where two or more Directorates or offices are involved in the procurement matter.

/s/ W. E. Colby

W. E. Colby

Executive Director-Comptroller

3 Attn

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Statement of Policy on the Position of
Contracting Officers in the Central Intelligence Agency

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REFERENCES: (a) Headquarters Regulation [REDACTED]

(b) Headquarters Handbook [REDACTED]

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(c) Project Officers Manual

1. The National Security Act of 1947 and the CIA Act of 1949 confer certain very important special authorities on the Director and the Agency. These give the Agency the security and flexibility which are essential to carry out its mission. They imply, however, an equivalent special responsibility that the Agency conduct its affairs in a manner beyond reproach, in the classic phrase "above suspicion," of impropriety or incompetence. This is of particular importance in the management of the contracts the Agency executes to carry out many of its functions. Since the Agency has arranged that the contracting function has been decentralized to operating Directorates, it is important that all concerned be clear as to their specific responsibilities to assist the Director to implement the special responsibility and authority conferred on him.

2. The referent publications are specific in delineating the authority of Agency contracting officers, delegated from either the Director of Central Intelligence or the Director of Logistics. To insure that these contracting officers are fully able to exercise the Agency's responsibility, as well as its authority, I ask that each Deputy Director take the necessary steps to insure that the referent contracting procedures, designed to protect the integrity and business interests of this Agency, are fully enforced. I specifically request that each Deputy Director insure that the internal procedures of his Directorate are structured to bring contracting officers into the pre-procurement planning cycle at the earliest possible point in time and in any event before proposals are solicited or unsolicited proposals are acted upon. Contracting officers must be afforded every opportunity to participate in and review proposed procurement plans and to maintain an intimate knowledge of the procurement until it is completed.

3. While the formal responsibility and authority of contracting officers are clearly stated in referent publications, confusion sometimes exists as to the role of other Agency personnel participating in a project involving contracts. To clarify this

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matter for all personnel, I have outlined below a series of points which I would ask you to bring to the attention of your personnel, particularly your program directors and technical officers who are or may be involved in the procurement of research, development, services and/or production. These will also be included in appropriate training and briefing materials for all concerned personnel:

a. Agency contracting officers have the final responsibility for executing contractual documents. Inherent in this responsibility is the protection of the interests of the Government and the reputation of the Agency for integrity and fair dealings in all contractual and precontractual relations with contractors and their representatives. Additionally, Agency contracting officers are responsible for insuring that all contractual documents are in compliance with applicable laws and regulations, seeking legal advice from the General Counsel as appropriate.

b. All employees of this Agency are agents of the U. S. Government who can only act within the scope of authority conferred on them before the Government can be held contractually liable as a result. The Agency's rules provide that no employee of this Agency may initiate a course of action, including a change to an existing contract, with any individual, company, or institution which commits the Agency to pay for any service, equipment, materiel, study or anything of value without express delegation of such authority. Thus, no employee of this Agency may commit or promise to commit the Agency in any manner or make representations which might be construed as binding upon the Government in a contractual matter without delegated contracting authority.

c. Unauthorized acts of Agency employees with respect to contracts may result in claims from contractors for unplanned expenditures of Government funds, litigation with private concerns, delays in operationally related procurements, and unfavorable exposure to both the general public and the Congress of the United States. Such unauthorized acts of employees cannot be tolerated.

d. All employees participating in any way in contract relationships will insure that all matters affecting the scope, finances, performance, term or any other aspect of the contract are made known to the contracting officer for appropriate action with respect to the contract.

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Insure Interface at Appropriate Level Between
Contractor/Agency Technical Management

1. There is a clear need to establish a basis for positive communications between senior Agency technical managers and senior managers of those contractors who are performing work under Agency contracts.
2. To satisfy this need, Agency managers are encouraged to visit and become familiar with the capabilities and goals of contractors who are performing work on contracts under their cognizance. This interface will also permit contractor and Agency management to periodically exchange views on significant problem areas. It is the responsibility of senior Agency technical managers to be aware of problems encountered on contracts which are under their supervision.
3. Upon the award of a contract, contractor management should be provided with a channel to Agency management and encouraged to solicit its views in appropriate cases. This policy should not impair the authority of the contracting officer or the project officer who is charged with the immediate supervision of a contract. Its purpose is to insure that senior Agency and contractor managers have an opportunity to maintain overall management visibility.
4. It is obvious that such interface need only apply to major contracts or to contracts supporting critical requirements of an operational or sensitive nature. Deputy Directors should establish within their Directorates the levels of interface which they consider sufficient to accomplish the purpose, keeping in mind the clear need for responsible channels of communication with senior contractor management.

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Technical Management of Contracts Involving Two or More Directorates

1. When contractors are faced with situations which require them to take technical direction from several Agency technical monitors, the potential for confusion, for delay, and for unanticipated claims against the Agency is very great. The Agency image also suffers under these circumstances since contractors will certainly sense the absence of firm organizational and management control over Agency personnel.
2. Deputy Directors should issue appropriate instructions within their Directorates requiring the development of an organizational plan with the initiation of each contract involving two or more offices or Directorates. Such plans should define the responsibility of each Agency component with regard to the management of the technical undertaking and should identify that technical officer (or officers) responsible for providing technical direction to the contractor.
3. The Office of Logistics will add new clauses to future Agency contracts cautioning the contractor against accepting technical changes or direction on Agency contracts from persons other than those who have been specifically identified as Agency officers authorized to provide technical direction to the contractor.

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9 MAY 1973

OFFICE OF LOGISTICS
PROCUREMENT NOTE NO. 68

AUTHORITY OF SPONSOR'S EMPLOYEES

REFERENCE: Procurement Note No. 62 dtd 10 Jan 1973,
Statement of Policy and Related Matters
Concerning Contractual and Technical
Management of Agency Contracts

1. In order to clarify the contractual authority of Agency employees, the following new clause shall be included, except as noted in paragraph 2, in all Agency contracts effective 15 May 1973:

Authority of Sponsor's Employees

The Contracting Officer is the only employee of the Sponsor authorized to enter into contracts, amendments, or to direct changes pursuant to the "Changes" clause or other clauses hereunder permitting equitable adjustments affecting the contract price. Consequently, the Contracting Officer is the only employee of the Sponsor who is authorized to commit Government funds pertaining to the execution of this contract. Unless otherwise specified herein, no other employee of the Sponsor has the authority to initiate a course of action affecting the price of this contract. Should any action by an employee of the Sponsor other than the Contracting Officer imply a commitment on the part of the Government which would affect the price of this contract, the Contractor must notify the Contracting Officer and receive his approval prior to proceeding. Otherwise, the Contractor proceeds at his own risk.

2. It is not intended that this clause be inserted in purchase orders for commercial products or other contractual documents where there is no possibility of direction being provided to the Contractor by employees of the Agency other than the Contracting Officer.

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John F. Blake
Director of Logistics